

BENJAMIN T. FRANKLIN

IBLA 74-252

Decided March 4, 1975

Appeal from decision of Utah State Office, Bureau of Land Management, requiring execution of special stipulations as a condition precedent to the issuance of oil and gas lease U-25001.

Vacated and remanded.

1. Oil and Gas Leases: Applications -- Oil and Gas Leases: Consent of Agency -- Oil and Gas Leases: Stipulations

Where the Forest Service requests a stipulation effectively barring any occupancy or use of the surface as a condition precedent to the issuance of an oil and gas lease for lands in a national forest, based on the fact that the land is in an "inventoried roadless area," and where the Forest Service later substitutes a less restrictive stipulation, a Bureau of Land Management decision requiring the execution and filing of the roadless area stipulation will be vacated and the case will be remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

APPEARANCES: Gerald E. Nielson, Esq., Yano & Nielson, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Benjamin T. Franklin appeals from the February 22, 1974, decision of the Utah State Office, Bureau of Land Management (BLM), requiring him to execute special "no surface occupancy" stipulations as a condition precedent to the issuance of oil and gas lease U-25001 for sections 25, 26 and 35 in T. 20 S., R. 6 E., SLM, Manti-La Sal National Forest, Utah.

In a similar case involving nearly identical stipulations, Rainbow Resources, Inc., 17 IBLA 142 (1974), the Forest Service

indicated a willingness to substitute the following somewhat less stringent stipulations which would allow some surface activity:

It is mutually understood that some of the lands embraced in this lease have been inventoried as roadless areas and must be evaluated for their wilderness potential. Depending on the results of the evaluation, the areas in question may be determined as suitable for further wilderness study, or not suitable for wilderness. Those areas determined as suitable for wilderness may ultimately be classified as wilderness.

In the inventoried roadless areas, the following restrictions shall apply:

A. Existing roads, if any, may be used for temporary access in a non-destructive manner, but may not be reconstructed, improved or graded.

B. Where temporary access is needed to an area not served by an existing road, methods of access not resulting in erosion, scars or environmental damage shall be used.

C. Where long term access or development is desired, or where the method to be used will possibly cause environmental damage, an application for such access or development shall be filed with the Supervisor of the National Forest involved. Such application shall include the nature of the proposed access or development, any measures proposed to minimize the environmental impact, including proposed restoration measures, and a map of the location and the access or development. The Supervisor will coordinate the proposal with the local office of the United States Geological Survey, and based upon such coordination and agreement reached with the United States Geological Survey, will either approve the proposal, conditioned upon necessary protective measures, or will disapprove the proposal.

D. This clause shall become inoperative in the event the area is determined as not suitable for wilderness.

E. If the area, or part of it, is determined as suitable for wilderness study, this clause shall remain in full force and effect until the area is either classified for wilderness or is formally

rejected for such classification. If the area is classified as wilderness, this lease shall become subject to the provisions of the Act of September 3, 1964, 78 Stat. 893, and the Forest Service regulations and policies pertaining thereto.

17 IBLA at 144, 145.

As similar action in this case seemed appropriate, we directed an inquiry to the Regional Forester asking whether the Forest Service would be inclined to make the same substitution again. By its letter of December 31, 1974, the Forest Service agreed to make the same substitution in this case.

[1] Since the substitute stipulations offered by the Forest Service appear to be reasonable and do permit some surface occupancy, the case files will be remanded to the Utah State Office for submission to the appellant for execution.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and remanded for action consistent with the opinions expressed herein.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

